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**10. Wills (§ 467\*)—Construction—Gift to Wife—Distribution of Remainders.**—A direction to testator's wife, following a clause giving her all his personal property, except cash and choses in action, that the estate be apportioned among their children equally upon her death, held an expression of opinion, in view of a direction for advancements at her discretion.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 813.]

**11. Wills (§ 612 (2)\*)—Construction—Gift Over or Remainder after Gift.**—A testator's direction that the interest on all his investments be collected by his wife, as executrix, and applied to the support of herself and the children, but if, in her opinion, it was inadequate therefor, she could use the principal as she desired, constitutes a gift of the property, and any gift over of the remainder after her death is void.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 826, 829.]

**12. Wills (§ 865 (1)\*)—Partial Intestacy.**—In consideration of a will bequeathing property to testator's wife, held, that testator died intestate as to one-half interest in a house owned jointly with his wife, and which his will excepted from a general direction to sell.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 1044.]

Appeal from Corporation Court of Winchester.

Bill by Georgia B. Conrad, as executrix of the estate of Holmes Conrad, deceased, and in her own right, against Robert Y. Conrad and others, involving the construction of a will. Judgment for plaintiff, and defendant Holmes Conrad appeals. Affirmed.

*Thomas W. Harrison* and *R. Gray Williams*, both of Winchester, for appellant.

*John M. Steck* and *Jas. P. Reardon*, both of Winchester, for appellees.

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BUCHANAN *v.* HIGGINBOTHAM.

Nov. 14, 1918.

[97 S. E. 340.]

**1. Account Stated (§ 6 (2)\*)—Presumption.**—The rule that an account rendered is presumed correct where the debtor remains silent applies as between a merchant and customer.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 84.]

**2. Evidence (§ 354 (9)\*)—Books of Account—Regular Course of Business.**—In an action by a merchant against a customer, whose

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

store building he rented, books kept by the double-entry method were admissible in evidence, although they contained items as to merchandise, which complainant did not regularly deal, bought for defendant from other merchants.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 98.]

**3. Evidence (§ 354 (9)\*)—Books of Account—Cash Payment.**—Books of account are admissible in evidence to show small cash payment made in the course of business in accordance with the previous custom of the parties.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 98.]

**4. Gifts (§ 47 (1)\*)—Work and Labor (§ 7 (1)\*)—Services and Payments by Members of Family—Presumption.**—The presumption that services and payments by one member of a family for or to another member of a family are gifts is overcome, where charges are regularly made and accounts rendered.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 724-5; 7 Va.-W. Va. Enc. Dig. 304-9.]

**5. Evidence (§ 75\*)—Failure to Produce—Inference.**—Where an account was referred to a commissioner, it was the duty of defendant, if he knew of any evidence to sustain his allegations, to produce it, or at least give the names of the witnesses, and where he failed to do so it will be inferred that no such evidence existed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 98.]

Appeal from Corporation Court of Staunton.

Suit by A. T. Higginbotham against B. F. Buchanan, administrator of Laura T. Higginbotham, deceased. Decree for complainant, and defendant appeals. Affirmed.

*Timberlake & Nelson* and *Chas. Curry*, all of Staunton, for appellants.

*J. M. Perry*, of Staunton, for appellee.

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TURK v. MARTIN.

Nov. 14, 1918.

[97 S. E. 349.]

**1. Assault and Battery (§ 35\*)—Action for Damages—Provocation—Evidence.**—In action for damages for personal injuries resulting from an alleged felonious assault, evidence held to justify finding that plaintiff said or did nothing that would justify assault.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 739.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.